

## INITIATIVE 739

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 739 to the People is a true and correct copy as it was received by this office.

1       AN ACT Relating to drug offenses; reenacting and amending RCW  
2   69.50.401; adding a new chapter to Title 70 RCW; creating a new  
3   section; prescribing penalties; and providing an effective date.

4   BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5       NEW SECTION.   **Sec. 1.**   FINDINGS AND INTENT.   (1) The people of  
6   Washington state find as follows:

7       (a) Our jails and prisons are overcrowded as a result of  
8   incarcerating nonviolent drug possession offenders.   Incarcerating  
9   these offenders forces our corrections and police systems to focus  
10  limited resources on nonviolent offenders.

11       (b) Studies conducted by the federal government as well as those  
12  states which have replaced drug treatment programs for incarceration  
13  have shown that treatment is more effective at reducing drug-related  
14  crime and saves money.

15       (c) Imprisoning people for use of marijuana takes money from law  
16  enforcement budgets which could be better used to pursue violent  
17  offenders.

18       (2) Therefore, the people of Washington state intend to:

1 (a) Send nonviolent, simple drug possession offenders to  
2 treatment programs rather than jail or prison; and  
3 (b) Impose fines rather than jail sentences for simple possession  
4 of small amounts of marijuana; and  
5 (c) Require the Washington state legislature to appropriate funds  
6 for a broad range of treatment programs to be paid for by savings  
7 from lower rates of incarceration and crime.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
9 section and RCW 9.94A.120 and 70.96A.020 apply throughout this  
10 chapter unless the context clearly requires otherwise.

11 (1) "Simple drug possession offense" means the nonviolent,  
12 unlawful possession, use, or transportation for personal use of any  
13 controlled substance defined in RCW 69.50.101(d). "Simple drug  
14 possession offense" does not include manufacturing, delivery, or  
15 possession with intent to deliver of any controlled substance.

16 (2) "Treatment" or "treatment program" means a program approved  
17 by the agency for persons found guilty of a simple drug possession  
18 offense which has as its sole purpose the rehabilitation of the  
19 offender and delivers services of a type and in a manner that has  
20 been shown to advance the rehabilitative purposes of this chapter. A  
21 treatment program must be operated in facilities other than  
22 correctional facilities and may include or have as one of its  
23 components one or more of the following: diagnostic evaluation,  
24 outpatient treatment and/or counseling, half-way house treatment,  
25 drug replacement medical treatment, chemical dependency education and  
26 counseling, drug use prevention and harm reduction counseling,  
27 limited intensive inpatient or residential drug treatment as needed  
28 to address special detoxification or relapse situations or to treat  
29 persons gravely disabled by alcohol or other drugs, family  
30 counseling, social service care, vocational rehabilitation and career  
31 counseling, or literacy training. Drug testing may be a minor  
32 component of, but may not substitute for, a treatment program.

33 (3) "Treatment plan" means the documented recommendations of an  
34 appropriately trained treatment professional, following an assessment  
35 of the offender, identifying the least restrictive treatment programs  
36 reasonably calculated to assist the offender to end dependence on  
37 illegal drugs and avoid drug-related activities that are harmful to  
38 others.

(4) "Offender" means any person found guilty of a simple drug possession offense.

(5) "Agency" means the division of alcohol and substance abuse.

NEW SECTION. **Sec. 3. POSSESSION OF CONTROLLED SUBSTANCES--TREATMENT--EXCEPTIONS.** (1)(a) Notwithstanding any other provision of law, and except as provided in subsection (3) of this section and section 4(2) of this act, no offender may be sentenced to incarceration in any correctional facility as a result of having been found guilty of a simple drug possession offense.

(b) Except as provided in subsections (2) and (3) of this section, upon finding a person guilty of a simple drug possession offense, the court shall require the offender to participate in and complete, and the agency shall provide, a treatment program pursuant to an individualized treatment plan.

(c) Notwithstanding the requirement in this chapter that treatment programs be operated in facilities other than correctional facilities, the court may require and the agency accordingly shall provide treatment to an offender while the offender is incarcerated for another offense or after the offender is released from incarceration.

(d) Once the court requires participation in a treatment program, the court may require any offender who is reasonably able to do so to contribute a specified amount to the cost of the offender's treatment program and shall impose such amount as a fine to be collected by the court and paid to a treatment fund maintained by the agency.

(2) Subsection (1)(b) of this section does not apply to any person found guilty of possession of forty grams or less of marijuana under RCW 69.50.401(e).

(3) Subsection (1) of this section does not apply to:

(a) Any offender who refuses to abide by the conditions of a required treatment plan; or

(b) Any offender who (i) has two separate convictions for simple drug possession offenses, including any convictions that have been set aside under section 5 of this act; (ii) has participated in two separate treatment programs pursuant to subsection (1) of this section; and (iii) is found by a court to be unamenable to treatment.

(4) Upon entering an order requiring the agency to provide a treatment program under subsection (1) of this section, the court

1 shall notify the agency, and the agency, at its sole discretion,  
2 shall prepare an individualized treatment plan and forward it to the  
3 court and the offender. Within seven days of receiving the treatment  
4 plan, the court shall order the offender to participate in a  
5 treatment program specified in the individualized treatment plan.

6 (5) No treatment plan required under subsection (1) of this  
7 section may exceed twelve months.

8 NEW SECTION. **Sec. 4.** MODIFICATION OR REVOCATION OF TREATMENT.

9 (1) If, at any point during the course of the treatment plan, the  
10 treatment program provider notifies the agency that the offender is  
11 unalienable to the treatment being provided but may be amenable to  
12 other treatments or programs, the agency may modify the treatment  
13 plan.

14 (2) If, at any point during the course of the treatment plan, the  
15 treatment program provider notifies the agency that the offender is  
16 unamenable to the treatment being provided and the agency determines  
17 that the offender is unamenable to all other forms of treatment, the  
18 agency may move the court to revoke treatment. At the revocation  
19 hearing, the court shall hear all relevant testimony, including, if  
20 possible, the testimony, which may be telephonic, of at least one  
21 licensed physician trained and experienced in the field of substance  
22 abuse treatment, who has examined the offender. The court may revoke  
23 treatment if it finds that the grounds for revocation have been  
24 established by clear, cogent, and convincing proof. If treatment is  
25 revoked, the court may sentence the offender to incarceration  
26 pursuant to otherwise applicable law without regard to the provisions  
27 of this chapter.

28 NEW SECTION. **Sec. 5.** DISMISSAL OF CHARGES UPON SUCCESSFUL  
29 COMPLETION OF TREATMENT. When an offender has completed a treatment  
30 program required under section 3 of this act, the agency shall notify  
31 the court that ordered the treatment program. Except as provided in  
32 section 3(3)(b) of this act, the court shall set aside the conviction  
33 and dismiss the indictment or information against the offender. The  
34 court records of the conviction may not be expunged.

35 NEW SECTION. **Sec. 6.** TREATMENT FUNDING. The legislature shall  
36 appropriate funds to carry out the provisions of this chapter.

1        NEW SECTION.    **Sec. 7.**    PROGRAM AUTHORITY.    (1) Consistent with  
2    RCW 70.96A.040, the agency shall establish by all appropriate means a  
3    broad range of approved prevention and treatment programs throughout  
4    the state in order to ensure a continuum of prevention and treatment  
5    services for persons convicted of simple drug possession offenses.

6        (2) Notwithstanding any other provision of law, the agency may  
7    authorize and regulate drug treatment programs based in hospitals and  
8    physicians' offices providing diverse medical services using  
9    medically established best practices for medical drug treatment and  
10   request any required licenses from agencies of the federal  
11   government.

12       (3) The agency shall have the authority given the department  
13   under chapter 70.96A RCW to administer the provisions of this  
14   chapter.

15       **Sec. 8.**    RCW 69.50.401 and 1998 c 290 s 1 and 1998 c 82 s 2 are  
16   each reenacted and amended to read as follows:

17       (a) Except as authorized by this chapter, it is unlawful for any  
18   person to manufacture, deliver, or possess with intent to manufacture  
19   or deliver, a controlled substance.

20       (1) Any person who violates this subsection with respect to:

21       (i) a controlled substance classified in Schedule I or II which  
22   is a narcotic drug or flunitrazepam classified in Schedule IV, is  
23   guilty of a crime and upon conviction may be imprisoned for not more  
24   than ten years, or (A) fined not more than twenty-five thousand  
25   dollars if the crime involved less than two kilograms of the drug, or  
26   both such imprisonment and fine; or (B) if the crime involved two or  
27   more kilograms of the drug, then fined not more than one hundred  
28   thousand dollars for the first two kilograms and not more than fifty  
29   dollars for each gram in excess of two kilograms, or both such  
30   imprisonment and fine;

31       (ii) amphetamine or methamphetamine, is guilty of a crime and  
32   upon conviction may be imprisoned for not more than ten years, or (A)  
33   fined not more than twenty-five thousand dollars if the crime  
34   involved less than two kilograms of the drug, or both such  
35   imprisonment and fine; or (B) if the crime involved two or more  
36   kilograms of the drug, then fined not more than one hundred thousand  
37   dollars for the first two kilograms and not more than fifty dollars  
38   for each gram in excess of two kilograms, or both such imprisonment

1 and fine. Three thousand dollars of the fine may not be suspended.  
2 As collected, the first three thousand dollars of the fine must be  
3 deposited with the law enforcement agency having responsibility for  
4 cleanup of laboratories, sites, or substances used in the manufacture  
5 of the methamphetamine. The fine moneys deposited with that law  
6 enforcement agency must be used for such clean-up cost;

7 (iii) any other controlled substance classified in Schedule I,  
8 II, or III, is guilty of a crime and upon conviction may be  
9 imprisoned for not more than five years, fined not more than ten  
10 thousand dollars, or both;

11 (iv) a substance classified in Schedule IV, except flunitrazepam,  
12 is guilty of a crime and upon conviction may be imprisoned for not  
13 more than five years, fined not more than ten thousand dollars, or  
14 both;

15 (v) a substance classified in Schedule V, is guilty of a crime  
16 and upon conviction may be imprisoned for not more than five years,  
17 fined not more than ten thousand dollars, or both.

18 (b) Except as authorized by this chapter, it is unlawful for any  
19 person to create, deliver, or possess a counterfeit substance.

20 (1) Any person who violates this subsection with respect to:

21 (i) a counterfeit substance classified in Schedule I or II which  
22 is a narcotic drug, or flunitrazepam classified in Schedule IV, is  
23 guilty of a crime and upon conviction may be imprisoned for not more  
24 than ten years, fined not more than twenty-five thousand dollars, or  
25 both;

26 (ii) a counterfeit substance which is methamphetamine, is guilty  
27 of a crime and upon conviction may be imprisoned for not more than  
28 ten years, fined not more than twenty-five thousand dollars, or both;

29 (iii) any other counterfeit substance classified in Schedule I,  
30 II, or III, is guilty of a crime and upon conviction may be  
31 imprisoned for not more than five years, fined not more than ten  
32 thousand dollars, or both;

33 (iv) a counterfeit substance classified in Schedule IV, except  
34 flunitrazepam, is guilty of a crime and upon conviction may be  
35 imprisoned for not more than five years, fined not more than ten  
36 thousand dollars, or both;

37 (v) a counterfeit substance classified in Schedule V, is guilty  
38 of a crime and upon conviction may be imprisoned for not more than  
39 five years, fined not more than ten thousand dollars, or both.

1 (c) It is unlawful, except as authorized in this chapter and  
2 chapter 69.41 RCW, for any person to offer, arrange, or negotiate for  
3 the sale, gift, delivery, dispensing, distribution, or administration  
4 of a controlled substance to any person and then sell, give, deliver,  
5 dispense, distribute, or administer to that person any other liquid,  
6 substance, or material in lieu of such controlled substance. Any  
7 person who violates this subsection is guilty of a crime and upon  
8 conviction may be imprisoned for not more than five years, fined not  
9 more than ten thousand dollars, or both.

10 (d) It is unlawful for any person to possess a controlled  
11 substance unless the substance was obtained directly from, or  
12 pursuant to, a valid prescription or order of a practitioner while  
13 acting in the course of his or her professional practice, or except  
14 as otherwise authorized by this chapter. Any person who violates  
15 this subsection is guilty of a crime, and upon conviction may be  
16 imprisoned for not more than five years, fined not more than ten  
17 thousand dollars, or both, except as provided for in subsection (e)  
18 of this section.

19 (e) Except as provided for in subsection (a)(1)(iii) of this  
20 section any person found guilty of possession of forty grams or less  
21 of marihuana shall be guilty of a (~~misdemeanor~~) class 2 civil  
22 infraction under chapter 7.80 RCW, and civil fines assessed shall be  
23 deposited in a treatment fund maintained by the division of alcohol  
24 and substance abuse.

25 (f) It is unlawful to compensate, threaten, solicit, or in any  
26 other manner involve a person under the age of eighteen years in a  
27 transaction unlawfully to manufacture, sell, or deliver a controlled  
28 substance. A violation of this subsection shall be punished as a  
29 class C felony punishable in accordance with RCW 9A.20.021.

30 This section shall not apply to offenses defined and punishable  
31 under the provisions of RCW 69.50.410.

32 NEW SECTION. Sec. 9. CODIFICATION. Sections 1 through 7 of  
33 this act constitute a new chapter in Title 70 RCW.

34 NEW SECTION. Sec. 10. EFFECTIVE DATE--PROSPECTIVE APPLICATION.  
35 This act takes effect July 1, 2001. This act applies prospectively  
36 only and not retroactively. It applies only to crimes committed on  
37 or after July 1, 2001.

1        NEW SECTION.   **Sec. 11.**   CAPTIONS.   Captions used in this act are  
2 not part of the law.

3        NEW SECTION.   **Sec. 12.**   SEVERABILITY.   If any provision of this  
4 act or its application to any person or circumstance is held invalid,  
5 the remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

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